



"Elmer, Mark (ENRD)"
<MElmer@enrd.usdoj.gov>

05/10/2006 05:13 PM

To RCurley@hollandhart.com

cc kmurray@chapman.com, randall@chapman.com,
Sheila.Dcruz@bp.com, Robin.Bullock@bp.com,
Pamela.Kaye@bp.com, Peggy

bcc

Subject RE: AR/UPCM Redline of Richardson Past Costs CD &
Site Figure

Kevin/Rich:

Here's EPA's second draft of the past costs decree for Richardson Flat.
It shows latest changes in red.

Please note that I have not revised the definition of Past Reponse Costs to refer to an attached cost summary. I have requested such a summary, which I will share with you when I receive it (I'm told it will take about 10 days). But I do not believe it is appropriate to refer to the summary unless we use the summary as the basis for settlement (i.e. define Past Costs to mean those costs identified (and only those costs) on the attached cost summary). To do otherwise, might cause confusion by implying that there are costs that EPA has paid but that do not show up on summary. I do not believe this is the case. So, we are prepared to recommend settlement on the basis of either (1) all costs paid in connection with Site through 3/1/06, OR (2) all costs identified on cost summary, but not some hybrid of the two. This version assumes you would chose the first option (i.e. all costs paid).

Thanks,

Mark

-----Original Message-----

From: RCurley@hollandhart.com [mailto:RCurley@hollandhart.com]

Sent: Monday, April 24, 2006 11:52 AM

To: Elmer, Mark (ENRD)

Cc: kmurray@chapman.com; randall@chapman.com; Sheila.Dcruz@bp.com;
Robin.Bullock@bp.com; Pamela.Kaye@bp.com

Subject: AR/UPCM Redline of Richardson Past Costs CD & Site Figure

<<Redline.rtf>>

Mark: Attached is the joint AR/UPCM redline of the Richardson Flat past costs consent decree along with a proposed figure depicting the Site. We look forward to working with you and your clients to finalize this consent decree. Rich



#151121-v1-richardson_-_upcm_arco_past_costs_cd_-_epa_second_draft.DOC

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

EPA's Second Draft

Deleted: AR/UPCM Redline

Formatted: Font: Bold

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No.

UNITED PARK CITY MINES COMPANY;
ATLANTIC RICHFIELD COMPANY; and
NORANDA INC.

Defendants.

Deleted: and

Deleted:

PARTIAL CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Richardson Flat Tailings Site located approximately 1.5 miles northeast of Park City, Utah ("the Site").

Deleted: s

Deleted: 106 and

Deleted: §

Deleted: 9606 and

Deleted: *inter alia*

Deleted: or to be incurred

Deleted:

B. By entering into this Consent Decree, neither of the Settling Defendants admits any liability to Plaintiff arising out of the transactions or occurrences that were or could have been alleged in the complaint.

C. By entering into this Consent Decree, the mutual objective of the Parties is to resolve the claims of the United States against Settling Defendants for Past Response Costs, subject to the reservations of rights in Paragraph 15, by allowing Settling Defendants to make a cash payment as described herein.

Deleted: In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. Section 9622(j)(1), EPA notified the Department of Interior ("DOI") and the State of Utah of negotiations with defendants ("Settling Defendants") of EPA's past response costs, and provided these entities with an opportunity to participate in such negotiations and to be a party to this Consent Decree. These parties have declined to participate in these negotiations and are not signatories to the Consent Decree.

C.

D. The United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon and inures to the benefit of the United States and the Settling Defendants and their respective successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

b. "Consent Decree" shall mean this Consent Decree.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

Deleted: g. "Effective Date" shall mean 60 days from the date that this District Court enters the Consent Decree, unless an appeal of the entry and judgment is filed during the 60-day period; if an appeal is taken, the Effective Date shall mean the date on which the District Court's judgment is affirmed. ¶

h. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

h

Deleted: i

i. "Parties" shall mean the United States and Settling Defendants.

Deleted: j

j. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA has paid at or in connection with the Site through March 1, 2006, plus accrued Interest on all such costs through such date.

Deleted: k

Deleted: incurred

k. "Plaintiff" shall mean the United States.

Deleted: l

l. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

Deleted: m

m. "Settling Defendants" shall mean United Park City Mines Company ("UPCM") and the Atlantic Richfield Company ("ARCO"), and their respective successors and assigns.

Deleted: n

n. "Site" shall mean the Richardson Flat Tailings Site, CERCLIS ID # UTD980952840, which is located approximately 1.5 miles northeast of Park City, Utah and is part of a 650 acre property owned by UPCM. The Site is the location of a mine tailings impoundment that covers approximately 160 acres in the northwest corner of UPCM's property and includes diversion ditches, wetlands and other features. The Site is depicted generally on the map attached as Appendix A.

Deleted: o

o. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

Deleted: , with associated

Deleted: remedial

Deleted: , including, without limitation, the fullest extent of any groundwater plume emanating from the Site

Deleted: located approximately 1.5 miles northeast of Park City, Utah, and is

Deleted: B

Deleted: 30

Deleted: the Effective Date of

V. PAYMENT OF RESPONSE COSTS

4. Payment of Past Response Costs to EPA. Within five business days after Settling Defendants receive notice from the United States that this Consent Decree has been lodged,

EPA's Second Draft

Deleted: AR/UPCM Redline

Formatted: Font: Bold

Deleted: pay

Settling Defendants shall deposit \$400,000 into an escrow account bearing interest on commercially reasonable terms, in a federally chartered bank (the "Escrow Account"). If the Consent Decree is not entered by the Court, and the time for any appeal of that decision has run, or if the Court's denial of entry is upheld on appeal, the monies placed in escrow, together with accrued interest thereon, shall be returned to Settling Defendants. If the Consent Decree is entered by the Court, Settling Defendants shall, within 15 days thereof, cause the monies in the Escrow Account to be paid to EPA in accordance with Paragraphs 5 and 6 below.

Deleted: to the United States as provided in

5. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with EFT instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the District of Utah following lodging of the Consent Decree.

6. At the time of payment, Settling Defendants shall also send notice that payment has been made to EPA and DOJ in accordance with Section XII (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill Identification Number 0894, DOJ case number 90-11-3-08764, and the civil action number.

7. The total amount to be paid pursuant to Paragraph 4 shall be deposited in the EPA Hazardous Substance Superfund.

VI. FAILURE TO COMPLY WITH CONSENT DECREE

8. Interest on Late Payments. If any Settling Defendant fails to make any payment under Paragraph 4 (Payment of Response Costs) by the required due date, Interest shall accrue on the unpaid balance from the due date through the date of payment.

Deleted: Effective Date

9. Stipulated Penalty.

a. If any amounts due under Paragraph 4 are not paid by the required date, Settling Defendants shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 8, \$500 per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number 0894, DOJ Case Number 90-11-3-08764, and the civil action number. Settling Defendants shall send the check (and any accompanying letter) to:

Regular Mail:

Mellon Bank
EPA Region 8
Attn: Superfund Accounting
Lockbox 360859
Pittsburgh, Pennsylvania 15251-6859

Or Express Mail:

EPA 360859
Mellon Client Service Center, Room 670
500 Ross Street
Pittsburgh, Pennsylvania 15262-0001

or to such other address as EPA may designate in writing.

c. At the time of payment of any penalties to EPA, each Settling Defendant shall send notice that such payment has been made to EPA and DOJ in accordance with Section XII (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID Number 0894, DOJ Case Number 90-11-3-08764, and the civil action number.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

10. If the United States brings an action to enforce this Consent Decree, Settling Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

11. The obligations of Settling Defendants to pay any amounts owed to EPA under this Consent Decree are joint and several. In the event of the failure of any one or more Settling Defendants to make the payments required under this Decree, the remaining Settling Defendant shall be responsible for such payments.

12. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

13. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section V or from performance of any other requirements of this Consent Decree.

VII. COVENANT NOT TO SUE BY PLAINTIFF

Deleted: 1

Deleted: Section Break (Continuous)

14. Covenant Not to Sue by United States. Except as specifically provided in Section VIII (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants or their respective officers, directors, or employees (to the extent that the liability of such officers, directors, or employees arises solely from their legal status as officers, directors, or employees) pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Section V, Paragraph 4 (Payment of Response Costs) and any amount due under Section VI (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendants (and their respective officers, directors, and employees to the extent that that the liability of such officers, directors, or employees arises solely from their legal status as officers, directors, or employees) and does not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY UNITED STATES

15. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenant Not to Sue by Plaintiff in Paragraph 14. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;

b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;

c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;

- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

IX. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

16. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Consent Decree, including but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

- b. any claim arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of Utah, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

17. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

18. Settling Defendants agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

19. The waiver in Paragraph 18 shall not apply with respect to any defense, claim, or cause of action that Settling Defendants may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against such Settling Defendants. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or "RCRA"), 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

X. RESERVATION OF RIGHTS BY SETTLING DEFENDANTS

Formatted: Font: Bold

Formatted: Font: Bold, Underline

Formatted: Font: Bold

20. The Settling Defendants reserve, and this Consent Decree is without prejudice to, all rights against the United States with respect to all matters not expressly included within the Settling Defendants' Covenant Not to Sue by Settling Defendants in Paragraph 16.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

21. Except as provided in Paragraph 18, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 18, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

22. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree means Past Response Costs as defined herein and the response actions at the Site for which the Past Response Costs were incurred. The contribution protection set forth in this Paragraph is intended to provide the broadest protection afforded by CERCLA for the matters addressed in this Consent Decree.

23. Settling Defendants agree that, with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree, they will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendants also agree that, with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of

the complaint or claim upon it. In addition, Settling Defendants shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

24. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VII.

XII. RETENTION OF RECORDS

25. Until ~~ten~~ (10) years after the entry of this Consent Decree, Settling Defendants shall preserve and retain all records, reports, or information (hereinafter referred to as "records") now in their possession or control, or which come into their possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

Deleted: five

Deleted: 5

26. After the conclusion of the 10-year document retention period in the preceding paragraph, Settling Defendants shall notify EPA and DOJ at least 90 days prior to the destruction of any such records, and, upon request by EPA or DOJ, Settling Defendants shall deliver any such records to EPA. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

Deleted: five

27. Settling Defendants each hereby certify that, to the best of their knowledge and belief, after thorough inquiry, they have not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to their potential liability regarding the Site since notification of alleged liability by the United States or the State or the filing of suit against them regarding the Site and that they have fully complied with any and all EPA requests for information

pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6972.

XIII. NOTICES AND SUBMISSIONS

28. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendants, respectively.

Formatted: No underline

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-3-08764)
P.O. Box 7611
Washington, D.C. 20044-7611

As to EPA:

Margaret J. (Peggy) Livingston
Senior Enforcement Attorney
U.S. Environmental Protection Agency, Region 8
999 Eighteenth Street, Suite 300 (8-ENFL)
Denver, CO 80202-2466

Maureen O'Reilly
EPA Enforcement Specialist
Richardson Flat Superfund Site
U.S. Environmental Protection Agency, Region 8
999 Eighteenth Street, Suite 300 (8ENF-RC)
Denver, CO 80202-2466

As to Settling Defendants:

As to United Park City Mines Company:

Formatted: Underline

Kerry C. Gee

United Park City Mines Company
P.O. Box 1450
Park City, Utah 84060

Kevin R. Murray, Esq.
Chapman and Cutler, LLP
136 S. Main, Suite 1000
Salt Lake City, Utah 84101

As to Atlantic Richfield;

Deleted:

Pamela Kaye
Atlantic Richfield Company
317 Anaconda Road
Butte, MT 59701

Sheila D'Cruz
BP America, Inc.
4101 Winfield Road
Mail Code 4 West
Warrenville, IL 60555

XIV. RETENTION OF JURISDICTION

Deleted: III

29. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XV. INTEGRATION/APPENDICES

Deleted: I

30. This Consent Decree and its appendix constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendix is attached to and incorporated into this Consent Decree: "Appendix A" is the map of the Site.

XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

31. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which

indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

32. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVII. SIGNATORIES/SERVICE

33. The Deputy Section Chief, Environmental Enforcement Section of the United States Department of Justice, and each undersigned representative of EPA and a Settling Defendant to this Consent Decree certify that they are authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

34. Settling Defendants hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

35. Settling Defendants shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XVIII. FINAL JUDGMENT

36. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 2006.

United States District Judge

EPA's Second Draft

Deleted: Draft March 21, 2006

Formatted: No underline

Formatted: No underline

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. United Park City Mines Co., et al., civil action number _____, relating to the Richardson Flat Tailings Site.

FOR THE UNITED STATES OF AMERICA:

W. BENJAMIN FISHEROW
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

STEPHEN J. SORENSON
United States Attorney
185 South State Street, Suite 400
Salt Lake City, UT 84111

MARK C. ELMER
Trial Attorney
U.S. Department of Justice
Environmental Enforcement Section
999 Eighteenth Street
North Tower, Suite 945
Denver, CO 80202

ROBERT E. ROBERTS
Regional Administrator, Region 8
U.S. Environmental Protection Agency
999 Eighteenth Street, Suite 300
Denver, CO 80202

MARGARET J. (PEGGY) LIVINGSTON
Senior Enforcement Attorney
U.S. Environmental Protection Agency, Region 8
999 Eighteenth Street, Suite 300 (8-ENFL)
Denver, CO 80202

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. United Park City Mines, et al., civil action number _____, relating to the Richardson Flat Tailings Site.

FOR DEFENDANT UNITED PARK CITY MINES COMPANY:

Kerry Gee, Vice President

Date:

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Kevin R. Murray
Chapman and Cutler LLP
1000 Kearns Building
136 South Main Street
Salt Lake City, Utah 84101

Deleted: Mabey Murray LC

Deleted: 4-1645

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. United Park City Mines, et al., civil action number _____, relating to the Richardson Flat Tailings Site.

FOR DEFENDANT ATLANTIC RICHFIELD COMPANY:

Date:

Robin Bullock
Atlantic Richfield Company
317 Anaconda Road
Butte, MT 59701

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Sheila D'Cruz
BP America, Inc.
4101 Winfield Road
Mail Code 4 West
Warrenville, IL 60555